



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Mountain-Prairie Region

IN REPLY REFER TO:

FWS/R6
MBSP

MAILING ADDRESS:

P.O. Box 25486 DFC
Denver, Colorado 80225-0486

STREET LOCATION:

134 Union Boulevard
Lakewood, Colorado 80228-1807

William Healy, Jr., Vice-President (Project Executive)
Ruby Pipeline LLC
Two North Nevada Avenue
Colorado Springs, Colorado 80903

JUN 25 2010

Dear Mr. Healy:

Thank you for your June 14, 2010, Letter of Commitment to implement the Ruby Pipeline LCC's (Ruby) Voluntary Conservation Plan for Migratory Birds (Plan). The U.S. Fish and Wildlife Service (Service) recognizes and greatly values your voluntary conservation commitment on behalf of migratory birds. Your Letter of Commitment and Plan represent an important milestone in a unique collaborative conservation effort between industry, the Service, and other federal and state agencies. We compliment you on the extensive efforts of your company, legal counsel, and contractors in coordinating with the Service to reduce the impacts of a 670-mile-long pipeline through four states, which includes multiple habitat types important to many migratory birds and other wildlife.

The support document for the Plan, which includes the Habitat Equivalency Analysis (HEA), is a credible scientific approach that documents the magnitude of impacts associated with the construction, operation, and maintenance of the proposed pipeline. The HEA has been used previously by the Service and other federal agencies for various projects, but the extent to which this method was developed and applied to this pipeline project is unique. In using this approach you have set a standard that we hope others in the industry will adopt. The estimation of habitat loss over time is a more effective way of determining true impacts to trust resources over the life of the project. However, although the Plan is an exceptional effort on Ruby's behalf to address impacts to migratory birds, we recognize that there will still be negative impacts to natural resources associated with construction, operation and maintenance of this pipeline.

Given the Service's responsibilities for conservation of migratory birds under the Migratory Bird Treaty Act (MBTA), and eagles under the Bald and Golden Eagle Protection Act (BGEPA), we are charged with acting in the best interests of these species. We believe these interests are well-served whenever we can enter into voluntary partnerships with agencies, industry, and others to reduce impacts, and further migratory bird conservation efforts. Your Plan is a good example of how industry and the Service can work cooperatively in a collaborative manner to achieve conservation of natural resources within a project area slated for development. With full

implementation of this Plan by Ruby we expect that additional conservation measures will likely not be necessary for this project with respect to the MBTA or the BGEPA.

The Environmental Impact Statement (EIS) that was prepared by the Federal Energy Regulatory Commission (FERC) anticipated that a conservation plan would be completed to lessen the amount of unintentional take. The EIS anticipated that if conservation measures were implemented, then direct, indirect and residual impacts would be appropriately addressed. We believe that your Plan appropriately addresses the impacts to migratory bird habitat associated with this project.

The MBTA prohibits the taking, killing, possession, and transportation, (among other actions) of migratory birds, their eggs, parts, and nests, except when specifically permitted by regulations. While the MBTA has no provision for allowing unauthorized take, the Service realizes that some birds may be killed during pipeline construction operations even if all known reasonable effective measures to protect birds are used. The Service's Office of Law Enforcement (OLE) carries out its mission to protect migratory birds through investigations and enforcement as well as by fostering relationships with individuals, companies, and industries that have taken effective steps to avoid take of migratory birds, and by encouraging others to implement measures to avoid take of migratory birds. It is not possible to absolve individuals, companies, or agencies from liability even if they implement bird mortality avoidance or other similar protective measures. However, the OLE focuses its resources on investigating and prosecuting individuals and companies that take migratory birds without identifying and implementing all reasonable, prudent and effective measures to avoid that take. Companies are encouraged to work closely with Service biologists to identify available protective measures when developing project plans and/or avian protection plans, and to implement those measures prior to/during construction or similar activities.

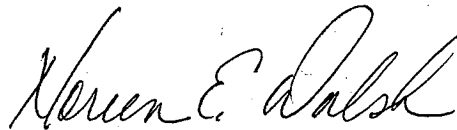
Implementation of this Plan, by Ruby, is not intended nor should it be construed to limit the Service from exercising its authority under any law, statute, or regulation, or from taking enforcement action against any individual, company, or agency of its obligations to comply with any applicable Federal, state, tribal, or local laws, statutes, or regulation.

The provisions of the Plan represent an expanded and improved level of conservation beyond that which other pipeline companies in our region have been previously willing to commit to. We commend you for this greater level of commitment and for the extensive migratory bird conservation measures contained within the Plan. Further, we acknowledge that funding provided through the Plan will allow for conservation actions to be directed toward the greatest needs of migratory birds in the pipeline project area. Your voluntary commitment of funding will result in important conservation actions including land acquisition, easement purchases, habitat enhancement, maintenance treatments, and habitat restoration for migratory birds.

Beyond the conservation actions within the Plan we also recognize Ruby's additional efforts in working with the Bureau of Land Management and the affected states on Ruby's Sagebrush Species Plan, with the Service on Ruby's Endangered Species Conservation Plan, with the State of Oregon for a wildlife habitat conservation agreement, and within the Reclamation Plan for this project. This demonstrates to us a high level of commitment to the conservation of affected species.

Ruby's support and participation with the Service and other federal and state agencies in conserving migratory birds represents a model for the Federal Energy Regulatory Commission and the pipeline industry that we hope will be followed in future energy related projects. Please contact Kevin Kritz, with Migratory Birds and State Programs at (303) 236-4416, if you have any questions.

Sincerely,



Regional Director

cc:

U.S. Fish and Wildlife Service, Regions 1, 8; WO; OFWO, KFFWO, NFWO, UFWO, WFWO
Oregon Department of Fish and Wildlife, Director
Nevada Department of Wildlife, Director,
Utah Division of Wildlife Resources, Director,
Wyoming Department of Fish and Game, Director,
Bureau of Land Management, State Office Directors, Wyoming, Utah and Nevada
Fremont-Winema National Forest, Forest Supervisor
Bureau of Land Management, Mark Mackiewicz, Project Manager,
Federal Energy Regulatory Commission, David Swearingen, Project Manager